

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CHARLENE KOCIUBA,

Plaintiff,

10-CV-6139

v.

**DECISION
and ORDER**

NEW YORK STATE VOCATIONAL AND
EDUCATIONAL SERVICES FOR
INDIVIDUALS WITH DISABILITIES

Defendant.

Plaintiff, Charlene Kociuba, brings this action pursuant to the Age Discrimination in Employment Act of 1967 ("ADEA") (29 U.S.C. §§ 621-634) and the Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C. §§ 12112-12117) alleging that her former employer, New York State Vocational and Educational Services for Individuals with Disabilities (VESID), discriminated against her because she has a disability (hearing loss). VESID brings this motion to dismiss the Plaintiff's Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Plaintiff has not responded to the motion. For the reasons set forth below, VESID's motion to dismiss is granted and Plaintiff's Complaint is dismissed with prejudice.

The Eleventh Amendment to the United States Constitution bars federal court claims against states, absent their consent to such suit or an express statutory waiver of immunity. See Will v. Mich.

Dep't of State Police, 491 U.S. 58, 66 (1989); Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 98-100 (1984). The Eleventh Amendment bar extends to agencies and officials sued in their official capacities. See Kentucky v. Graham, 473 U.S. 159, 166 (1985). "An official arm of a state," such as VESID, "enjoys the same Eleventh Amendment immunity from suit in federal court as is enjoyed by the state itself." See Posr v. Court Officer Shield No. 207, 180 F.3d 409, 414 (2d Cir. 1999). Additionally, VESID's sovereign immunity has not been waived or abrogated for the purposes of either the ADA or the ADEA. See Nicolae v. Office of Vocational and Educational Services for Individuals with Disabilities, 257 Fed.Appx. 455, 2007 WL 4462429 (C.A.2 (N.Y.)) (holding that the district court did not err in dismissing claims against VESID for lack of subject matter jurisdiction).

Accordingly, because this Court lacks jurisdiction, Plaintiff's Complaint is hereby dismissed with prejudice.

ALL OF THE ABOVE IS SO ORDERED.

s/ Michael A. Telesca
MICHAEL A. TELESCA
United States District Judge

Dated: Rochester, New York
December 13, 2010